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SICK LEAVE ABUSE

Federal employees are fortunate to have generous sick leave benefits. Unfortunately, these benefits are sometimes subject to abuse. When this happens, supervisors must contend with one of the more difficult workplace problems. It is a problem made particularly difficult by a couple of factors. First, most supervisors are inclined to give employees the benefit of the doubt when it comes to using sick leave. After all, everyone gets sick or injured at some point in their career. Second, it is understood that employees are entitled to use sick leave for legitimate illnesses and injuries; therefore there is a natural reluctance to interfere with this use. There are times, however, when the use of sick leave becomes abusive. When this happens, supervisors must act, since excessive absence from the workplace can create staffing and work production nightmares.

The subject of unsatisfactory attendance was addressed earlier in the [September 2003 Bulletin](#). That issue dealt with a range of attendance problems, and briefly discussed the problem of sick leave abuse. In this issue, we will address the sick leave problem in more detail, and look at some remedies.

We begin with a review of the conduct standards related to leave use. A short discussion of attendance and leave is found in [USDA Personnel Bulletin 735-1 \(USDA Employee Responsibilities and Conduct\), Section 203, Subsection \(b\)](#), which reads as follows:

"Employees must normally obtain advance authorization for absences from duty. Approval of leave is a discretionary matter reserved to the supervisor. The taking of leave is not a right afforded to the employee, but is conditioned on the needs of Department service. Where absence from duty results from illness or an emergency, employees are required to notify their supervisor or other appropriate person as soon as possible. When an employee fails to notify properly his or her supervisor, an absence may be charged as unauthorized absence (Absence Without Leave – AWOL). An employee charged with AWOL may be subject to disciplinary or adverse action."

Subsection (b) is followed by a brief discussion on the use of sick leave in subsection (c). Since the use of leave can be a complex subject, questions should be addressed to the experts in this area. They are located in the Leave and Compensation Branch, Human Resources Division in Minneapolis. Their names/numbers, and the programs they service, can be found at: www.aphis.usda.gov/mrpbs (just click "Human Resources" and then "Pay, Leave and Tours of Duty").

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When does sick leave use become sick leave abuse?

Certainly any time you have direct evidence that an employee is using sick leave for something other than its intended purpose, it would be an obvious case of abuse. For example, if the employee claims that he or she is sick, but later that day is observed on the golf course, this would appear to be a case of abuse (discounting, for the moment, the possible therapeutic benefits of golf). Such direct observations rarely occur however. In most cases, determining if an employee is abusing leave is more subjective. This determination is generally based on two factors:

1. **The employee has a low sick leave balance** (and often a low annual leave balance as well).
2. **The employee repeatedly uses sick leave, usually one or two days at a time, and there is no evidence of a medical condition requiring the continuous, uninterrupted use of leave that would be indicative of a serious or disabling medical condition.** (If the evidence indicates such a condition, the issues will likely be medical accommodation or possibly removal for "inability to perform," rather than leave abuse.)

What can we do to deal with sick leave abuse problems?

First, we need to acknowledge that unlike some problems we encounter in the workplace, this one often does not have an easy or quick solution. It is likely to be one of the most time-consuming problems that you will encounter. With that in mind, here are some ways to deal with it:

- ❖ **Have a Local Leave Policy.** If you do not already have one, it is a good practice to have a local policy that spells out the mechanics for taking leave. The policy generally needs to be tailored to each work unit or location since each unit/location has somewhat different circumstances. For example, one of the things that employees should know is who to contact in the event they need leave (and who to contact if this person is not available) and the mechanics for making this contact (direct, via another person, by voicemail, etc.). This policy should be given to all employees, so there are no questions regarding the policy in the event that issues arise.
- ❖ **Counseling.** As is the case with many of the problems you encounter, resolution begins by talking to the employee – not about the specific medical problem involved, since such information is generally confidential, but about the problems that the employee's continual absences are causing. Perhaps the employee can adjust his/her medical appointments to avoid some of the absences, or perhaps there is some other solution.
- ❖ **Leave Restriction.** If counseling fails to solve the problem, generally the next step is to issue a leave restriction or requirement letter. Your servicing employee relations specialist can help you write this letter. The letter does not deny the employee the right to use sick leave (or any other leave), but establishes certain requirements for its use. These letters may vary in content, depending upon the particular circumstances involved. Generally the most important provision is a requirement that the employee provide medical documentation from his/her physician for every sick leave request.
- ❖ **If Leave Restriction Does Not Solve the Problem.** In most cases, the leave restriction letter will solve the problem. If it does not, other solutions will need to be explored. If it appears that the problem is a continuing, long-term medical condition, the Agency will need to look at the possibility of medical accommodation or, perhaps, removal for "inability to perform." If, on the other hand, the problem continues to be repeated absences without any evidence of a continuing, long-term condition, other avenues, including possible dismissal based on the continual, apparently unending, use of sick leave and leave without pay, will need to be considered.

This is another kind of situation where it is particularly important that you contact your servicing employee relations specialist early. In the beginning, there may not be an easy answer to your problem, but early intervention will help insure that a solution is found as soon as possible.

Letters and memorandums

There are a number of letters and memorandums that you may need to use when dealing with conduct and performance problems. In the next several issues of the Employee Relations Bulletin, we will talk about these letters/memorandums, and provide you some samples.



The first letter we will look at is the **LEAVE RESTRICTION LETTER**. This letter is mentioned in the preceding article on “Sick Leave Abuse.” The leave restriction letter is one option that supervisors have to deal with leave abuse problems. The purpose of this letter is to set some boundaries on the manner in which an employee uses leave, particularly sick leave. If leave abuse is the problem, the leave restriction letter will generally solve or at least mitigate it. Here is an example of what the letter looks like:

Dear Employee,

This is to inform you that your leave record is unsatisfactory. Your leave balances as of the end of Pay Period (number) are as follows:

Sick Leave:	hours
Annual Leave:	hours
Leave Without Pay:	hours

A review of your Time and Attendance Reports from Pay Period (number and dates) through Pay Period (number and dates) shows that _____ . During this period, you used (number) hours of annual leave, (number) hours of sick leave, and were granted (number) hours of leave without pay.

All Federal employees are entitled to sick and annual leave, consistent with the requirement that the granting of such leave is at the discretion of the supervisor, and that, in the case of annual leave, advance approval is required. However, it is expected that Federal employees will report for duty on a regular and consistent basis. Failure to do so seriously disrupts the efficient and effective flow of work and, therefore, adversely affects the ability of the Agency to carry out its program mission.

In view of your frequent absences, your negative sick leave balance, your very limited annual leave balance, and your significant use of leave without pay (may be one or more of these circumstances), your future use of leave will be monitored very closely. Until your use of leave improves substantially, the following restrictions will apply:

- 1. You will be expected to report to duty each day at your scheduled starting time. There will be no exceptions to this requirement unless approved by me or the acting supervisor in advance.**
- 2. Arriving for work late without a proper excuse, unauthorized absence from your work unit for extended periods of time, or leaving work early without a proper excuse, will be recorded as Absent Without Official Leave (AWOL).**
- 3. No annual leave (except emergency) will be granted unless scheduled in advance and approved by me or the acting supervisor. As a guide, annual leave should be requested at least as far in advance as the amount of leave requested (e.g. – a request for eight hours of annual leave should be made at least one day in advance). Annual leave for emergency purposes will not be granted unless, upon your return to work, you furnish proof that an emergency occurred which prevented you from returning**

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to work during the entire period of your absence. Acceptable written verification of an emergency must be submitted to me within three (3) workdays of your return to duty. The validity of each emergency will be determined by me based on the information that you provide. You will be carried in an Absent Without Official Leave (AWOL) status for any absence that is not approved as an emergency.

4. No sick leave will be granted unless you provide an acceptable medical or otherwise acceptable certificate to support each instance of sick leave, regardless of length. This certificate should be provided to me within three (3) workdays from the date that you return to duty, and must contain the following information:
 - a. Your name.
 - b. The date or dates that you were examined by a physician.
 - c. The period covered by your incapacitation.
 - d. The nature of the illness or injury involved, with sufficient information to determine if sick leave is justified.
 - e. The physician's certification that you were, in his/her opinion, unable to perform your duties on the dates covered by the certificate.
 - f. The name, address, telephone number and signature of the physician.

When advance notice of an illness or injury is not possible, you must request sick leave within one-half (½) hour of the beginning of your normal tour of duty, unless you can provide written proof that circumstances prevented you from doing so.

5. Leave without pay (LWOP) in lieu of annual or sick leave will be granted only when scheduled and approved in advance in accordance with the instructions provided in numbered paragraphs 3 and 4 above, or in verified cases of emergency.
6. In cases of emergency, you must personally call either me or the acting supervisor. Under no circumstances will merely leaving a message be acceptable.

This is to remind you that there is an Employee Assistance Program (EAP) available to all employees. EAP counselors are prepared to help you with a multitude of problems. These services are free to you and, in most cases, to your immediate family members. If you are interested, just call 1-800-222-0364. More information is available at www.dhhs.foh.gov.

The restrictions cited above will remain in force until your use of leave improves substantially. Failure to comply with these restrictions will result in you being placed in an AWOL status. Please be advised that being placed in an AWOL status, or failing to follow the instructions cited above, will result in a recommendation for disciplinary action. I trust that your leave record will soon improve so that these restrictions can be lifted.

Sincerely,

Your Supervisor

Terminating Temporaries

I have a temporary employee who I don't have work and/or funding for anymore. What do I do?

An employee serving under a temporary appointment may be separated at any time upon written notice, but supervisors should check with either their servicing employee relations specialist (ERS) or servicing staffing specialist prior to issuing a termination letter to the employee to confirm that the appointment is temporary. The written notice to the employee must state the reason(s) for the termination. If feasible, the notice of separation should be given to the employee at least one week in advance of the termination. Your office will draft and issue this letter.

What if I still need the position but this particular employee's conduct and/or performance is horrible? What do I do then?

If it is necessary to terminate a person's employment due to conduct and/or performance problems, you will need to provide your ERS with written documentation. You should also ask the employee for his or her explanation as to what happened, and document that conversation as well. After the documentation is received, your ERS will prepare a letter to the employee terminating his/her employment. The letter will be signed by the employee's supervisor.

But earlier you said we had to give them a one week notice. I really don't want them hanging around for another week. Do we have to give them that one week notice?

In a situation where you are terminating a temporary employee for conduct and/or performance, it is normally not feasible to give a one week notice. In most cases you will give the employee their notice of termination and it will be effective as of the end of the business day. It is suggested that you give the employee the notice at the end of the day so they can just go home and are not required to work any additional hours that day.

Do they have any appeal rights?

Temporary employees generally have no appeal or grievance rights regarding their termination; however, employees may file an Equal Employment Opportunity complaint alleging discrimination was a factor in the decision. Therefore, it is a good supervisory practice to have documentation to support the reasons for terminating a temporary employee.

Who do I contact if I need further information?

You can contact your ERS for further information. Contact information can be found in the Directory at the end of this Bulletin.



the Quiz



Here it is, back by popular (sorta, kinda) demand, the "Employee Relations Branch Bulletin Honor System Reader Quiz" (ERBBHSRQ). As before (see [March 2004 Bulletin](#)), the ERBBHSRQ will employ the "honor system," since once again the Employee Relations Branch is too poor to pop for the online option. As before, you should use the following *Scoring Matrix* to determine how well or badly you did. If you do not do well (i.e., you are ER-challenged), we have again provided some extra credit questions to provide you an opportunity for redemption.

QUESTIONS

1. What is something that supervisors can do to anticipate and plan for workplace violence?
2. Name three "rights" that managers have.
3. The _____ period provides supervisors an excellent opportunity to assess an employee's conduct and performance to determine if he/she should be retained.
4. Advocating on behalf of a relative is a violation of the _____ Practices.
5. The _____ is an independent, quasi-judicial agency that serves as the guardian of Federal merit principles, and hears employee appeals of adverse actions.
6. What important Merit Systems Protection Board decision provides agencies with 12 factors to consider when determining the reasonableness of disciplinary penalties?
7. Focus on the _____, not the employee.
8. What are three things that a supervisor can do to ensure the success of corrective action in conduct and performance cases?
9. Employees are permitted to solicit funds in the Federal workplace as long as they are being used for a "good cause." **T F**
10. What are the "Four Ws" that should be included in your documentation of conduct and performance problems? _____

THE SCORING MATRIX

<u>Your Score</u>	<u>What It All Means</u> (your score, that is)
8 – 10	You could be an employee relations specialist.
5 – 7	You could aspire to be an employee relations specialist.
2 – 4	You need some work, but all is not lost.
0 – 1	You are ER-challenged - your only hope is the extra credit questions on the next page.

(Turn the page for the Answers)

ANSWERS

1. Options include (1) encouraging employees to express concerns and report threats, (2) inventorying work areas to identify security strengths and weaknesses, (3) having an emergency response plan, and (4) being aware of the early warning signs of a developing workplace violence problem.
2. See the list of 12 “rights” printed in the **September 2004 Bulletin**.
3. *Probationary*
4. *Prohibited Personnel*
5. *U.S. Merit Systems Protection Board*
6. *Douglas v. Veterans Administration*. The 12 factors cited in this landmark case are often just referred to as the “Douglas Factors.”
7. *Problem*
8. See the list of 10 things that supervisors can do to ensure the success of corrective actions in the **December 2004 Bulletin**.
9. *False*. Employees cannot solicit funds in the workplace, even for good causes. The Combined Federal Campaign is the only organization authorized to solicit employees in the Federal workplace on behalf of charitable organizations. Employee organizations may also solicit among their members for organizational support and welfare funds.
10. A question from the previous quiz. The answer is: *Who, What, When, and Where*

EXTRA CREDIT QUESTIONS

Several of you indicated that the extra credit questions we gave you in the March 2004 quiz were too easy. A typical complaint was as follows: “Your extra credit questions were ridiculous. My pet ferret could answer them.” We do not, by the way, believe that this is actually true since our rented ferret was able to get only 3 of the 5 questions correct, and he (or she) seemed to be pretty smart. Nonetheless, we have listened to your concerns, and have provided some questions that we believe will be at least somewhat more challenging. You must answer at least one question correctly to achieve full redemption. Good luck to all of you!

1. What is the speed of dark?
2. How much deeper would the ocean be without sponges?
3. Why do psychics have to ask you for your name?
4. How do you know if you are out of invisible ink?
5. Where is the basement in a three story building located (approximately)?

THE ETHICS CORNER

REPRESENTATION



What is the first thought that comes to mind when you hear the word representation? Do you think about an attorney representing his/her client? It would not be unusual for some of us to make the connection to an attorney representing his/her client; however, in the Government representational activity covers more than an attorney-client representation. Let us take a look at the rule on representation.

The rule on representation states: Employees are prohibited from representing another person before a Federal court or Federal agency in a particular matter in which the United States is a party or has an interest. This statute applies to paid and unpaid compensation both on and off duty. This statute does not apply:

- To unpaid representation of one subject to disciplinary, loyalty, or other personnel administrative proceedings.
- To representation of immediate family members in matters not under your official responsibility, or in which you have not participated personally and substantially.
- To representation in connection with the proper discharge of official duties.
- To unpaid representation of non-profit organizations comprised mostly of current Federal employees, spouses, or dependent children (e.g. an employee recreation association).

Example 1: Ralph is a program analyst with MRP. He takes a two-year leave of absence from his MRP official position to accept a professor position with a local university. Ralph does not have any official MRP duties which would conflict with his position with the university. However, Ralph is asked by the President of the university to participate on a research grant committee. This committee has responsibility for writing a research grant proposal which will assist the university in furthering its research on the XYZ Project. Ralph performs work on the grant proposal along with other university faculty members. Ralph signs the research grant application as one of the principal investigators and the application is submitted to the Department of Health and Human Services (DHHS), National Institutes of Health (NIH). Ralph cannot be listed as principal investigator on the grant application, or if he defends the grant application before DHHS, NIH, he could violate the bar against unlawful representation.

Example 2: Allison, an MRP employee, prepares income tax reports for others in her spare time. If a tax report she prepared is audited by the IRS, 18 USC sec. 205 would prohibit her from representing her client during that audit. However, she could represent herself or an immediate family member before the IRS.

Please remember, it is better to raise the questions before getting involved in matters which may cause a conflict of interest. There is additional guidance available on the Ethics Training Module “Conflicting Interests” located at www.usda-ethics.net.



THE BULLETIN BOARD

✚ **TRAVEL CREDIT CARDS.** Problems involving the misuse of Government travel credit cards seem to be diminishing. We are still, however, receiving a significant number of cases from the Bank of America that involve the delinquent payment of bills. Please remind your employees that the Bank of America bills are to be paid immediately. Since employees receive compensation for the charges reflected on these bills, the expectation is that they will be paid by the due date. If employees are encountering any problems with tardy travel voucher payments, they should be instructed to advise you immediately.

✚ **PURCHASE CREDIT CARDS.** The Government purchase card is also to be used only for officially authorized purposes. Making personal purchases on the card, or using the card for non-personal purchases that have not been authorized, constitutes misuse of the card. A group is currently working to find ways to make it easier to identify misuse and deal with it effectively.

✚ **CONDUCT REGULATIONS.** There are two conduct directives that every supervisor should have. The first is *USDA Bulletin 735-1 (Employee Responsibilities and Conduct)*, which contains the conduct regulations of the U.S. Department of Agriculture. It is available on the web at:

www.aphis.usda.gov/mrpbs (hit *Human Resources*, then *Employee Relations*)

The second directive that every supervisor should have is *5 Code of Federal Regulations (CFR), Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch)*. It is available at:

www.aphis.usda.gov/mrpbs/new_employee_orientation (hit *Rules of the Road*)

✚ **STAFF CHANGES.** We have had several recent staff changes in the Employee Relations Branch. **Dennis McPeters**, formerly a member of our APHIS ER staff located in Fort Collins, recently accepted the position of Chief, APHIS Labor Relations Branch. Dennis was a member of the group that prepares and edits the ER Bulletin, and we will miss his contributions and insights. **Stephanie Renslow**, formerly a member of the AMS/GIPSA ER staff located in Minneapolis, accepted a position with the Food Safety and Inspection Service in Minneapolis. **Julie Dunn**, formerly a member of the AMS/GIPSA ER staff located in Washington, accepted a position with the Department of Interior. On the bright side, we welcome three new employees this month – **Oris Brown**, an Employee Relations Specialist who is assigned to our APHIS ER staff in Riverdale; **Robert Kraft**, who is assuming the position of APHIS ER Team Leader in Raleigh; and **Jason Thomas**, an intern who will be joining the AMS/GIPSA ER staff in Washington. Please note that the **Employee Relations Directory** that appears at the end of each Bulletin is updated quarterly, and reflects changes in program assignments as well as personnel.

NOTICE: The Employee Relations Branch is planning to hold a conference this fall in Minneapolis that will be open to all supervisors and managers. The tentative dates are September 19 to 23. More details will be printed in the June Bulletin.

TRAINING OPPORTUNITIES

Fundamentals of APHIS Human Resource Management (FAHRM)

(Required Training for New APHIS Supervisors in a Probationary Status)

The **Fundamentals of APHIS Human Resource Management (FAHRM)** Blended Learning course, complies with OPM and USDA requirements that **all new APHIS supervisors** demonstrate competency in Human Resources Management (HRM). Other leadership competency requirements are listed under the heading of Leadership Effectiveness Framework at the OPM website. The HRM performance requirements read: “ensures effective recruitment, selection, training, performance appraisal, recognition, and corrective/ disciplinary action; promotes affirmative employment, good labor relations and employee well-being.” FAHRM includes 40 hours of classroom instruction, over 12 hours of web seminars (using the telephone and the internet) and other self-paced, self-study learning required to meet the above stated requirements.

Application and Enrollment Procedures. The FAHRM Training Announcement for calendar year 2005 with course dates, locations, application and enrollment process, and APHIS 601, FAHRM course application, is found at the Training and Development website address:

www.aphis.gov/mrpbs/training_employee_development.html

The next FAHRM course will be held in **San Antonio, Texas** from **June 6 to 10, 2005**. Pertinent information regarding this class is as follows:

Course Dates: June 6 - 10, 2005 (40 hour classroom instruction)

Web Seminar Dates: May 16 - 20, 2005 – 1:00-3:30 p.m. ET

Deadline for Application: April 11, 2005

For Additional Information Contact:

FAHRM Program Manager, 301-734-8554 or betsy.m.guardiola@aphis.usda.gov

FAHRM Program Assistant, 301-734-5551 or Tanya.briscoe@aphis.usda.gov

EMPLOYEE RELATIONS THE LIGHTER SIDE

We struggled a bit trying to figure out how the following story relates to Employee Relations. As you will note, it sort of pertains to issues of good and bad performance. Anyway, as convoluted as the relationship to Employee Relations may be, here is a story that we thought was quite funny.

A man wanting to get rich quick walked into a downtown Bank of America and wrote on the back of the deposit slip, “This iz a stikkup. Put all your munny in the bag.” While waiting in line to give his note to the teller, he worried that someone had seen him write the note and might call the police before he reached the teller window. So he left the Bank of America and crossed the street to Wells Fargo.

When the Wells Fargo teller read his note, she surmised that he might not be the brightest light in the harbor and told him that she could not accept the note because it was written on a Bank of America deposit slip. She told him that he would either have to fill out a Wells Fargo deposit slip or go back to the Bank of America. Looking somewhat defeated, the man said “OK” and left. He was arrested a few minutes later as he was waiting in line again at the Bank of America.

EMPLOYEE RELATIONS DIRECTORY

APHIS

Riverdale

Kathy Welsh, *Branch Chief* (301) 734-4414
Lucille Lorenzano, Secretary (301) 734-4414
Oris Brown, ERS (301) 734-4992
Michelle Parker, ERS, Washington/Riverdale (located in Raleigh) (919) 855-7067
FAX: (301) 734-6351

Minneapolis/Fort Collins (Western Region)

Joan Carlson, *Team Leader*, Center for Veterinary Biologics, National Veterinary Services Laboratories (612) 336-3299
Milo Christianson, ERS - MRPBS-Minneapolis, Customer Training, Special Projects, MSPB Assistance (612) 336-3215
Jodi Foley, ERS - Wildlife Services (612) 336-3301
Linda Hatfield, ER Assistant, National Agency Checks/Inquiries (NACI) (612) 336-3292
FAX: (612) 370-2297
Trudy Driver, ERS - Plant Protection & Quarantine (PPQ), Professional Development Center (PPQ), National Wildlife Research Center (WS) (970) 494-7417
Taryn McCaughey, Clerk (970) 494-7419
Rene Wing, ERS - Veterinary Services, Centers for Epidemiology and Animal Health (970) 494-7416
FAX: (970) 494-7424

Raleigh (Eastern Region)

Robert Kraft, *Team Leader* (919) 855-7068
Inger Alston, ERS - VS (919) 855-7062
Margaret Brasfield, ERS - IES, CPHST, PPQ Hub Employees in Raleigh (919) 855-7065
Yamira Moreno-Cruz, ERS - PPQ (919) 855-7066
FAX: (919) 855-7074

AMS/GIPSA

Mark Leking, *Branch Chief* (202) 720-5721
Vondell Henson, *Team Leader*, APHIS International Services (202) 720-9039
Sandy Davis-Conway, ERS - Fruit & Vegetables, Tobacco (202) 205-3855
Keela Harris, ER Assistant (202) 720-1055
Kimberly Meyer-Chambers, ERS – GIPSA, Livestock & Seed, Transportation & Marketing (202) 720-9455
Mary Royster, ERS - MRP Ethics Advisor (Financial Disclosures, Outside Employment, Conflicts of Interest) (202) 720-9858
Jason Thomas, ERS – Fruit & Vegetables, Other (202) 690-3011
Vacant, Administrative Assistant (202) 720-5721
Vacant, ERS – Cotton, Dairy, Poultry, Science & Technology (202) 720-5721
FAX: (202) 720-3039

Previous issues of the Bulletin are available at www.aphis.usda.gov/mrpbs. Just click “Human Resources” and then “Employee Relations.” Questions, comments and ideas for future Bulletin articles can be directed to ER.Bulletin@aphis.usda.gov.